

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

APPLICATION 31366

PERMIT 21301

of:

U.S. Department of Agriculture
Inyo National Forest
351 Pacu Lane, Suite 200
Bishop, CA 93514

The Deputy Director for Water Rights finds that the State Water Resources Control Board (State Water Board) and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved any protests made in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA. The permit is being issued in accordance with the redelegation of authority (Resolution No. 2007-0057.)

Additionally, the State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Therefore, **Application 31366** filed on **October 3, 2002** has been approved by the State Water Board SUBJECT TO PRIOR RIGHTS and to the limitations and conditions of this permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source of water

Source:

Mammoth Creek

Tributary to:

Hot Creek thence

Owens River

within the County of **Mono**

2. Location of point of diversion

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
North 2,053,048 feet and East 6,994,326 feet	SW ¼ of SW ¼	4	4S	27E	MD

Location of place of storage

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
Twin Lakes: North 2,053,048 feet and East 6,994,326 feet	SW ¼ of SW ¼	4	4S	27E	MD

3. Purpose of use	4. Place of use	Section (Projected)*	Township	Range	Base and Meridian	Acres
Fish and Wildlife Enhancement						
Recreation						
	SW ¼ of SW ¼	4	4S	27E	MD	
	W ½ of NW ¼	9	4S	27E	MD	
	NW ¼ of SW ¼	9	4S	27E	MD	

The place of use is shown on map filed with the State Water Board.

Acronym used in this permit: Mammoth Community Water District (MCWD)

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed **150 acre-feet per annum** to be collected from **March 1 through June 30 of each year.**
(0000005C)
6. This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)
7. The capacity of the reservoir covered under this permit shall not exceed 150 acre-feet.
(0000005N)
8. Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2021.
(0000009)
9. After the initial filling of the storage reservoir, permittee's right under this permit extends only to water necessary to keep the reservoirs full by replacing water lost by evaporation and seepage and to refill if emptied for necessary maintenance or repair. Such right shall be exercised only during the authorized diversion season. Twin Lakes shall be operated pursuant to the following conditions:
 - a. The lake is to be full by May 1, not to exceed the current maximum level; and
 - b. No drawdown shall occur from May 1 through October 31.
(0000040M)

10. This permit is subject to the continuing authority of the State Water Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.

(0000042)
11. The reservoir shall be kept open to the public for recreational use, subject to a reasonable charge for any services or facilities that are provided by permittee. Failure to allow public access may result in revocation of the permit or reduction in the amount of water that may be stored.

(0030045)
12. Permittee shall install and properly maintain a staff gage in the reservoir, satisfactory to the State Water Board, for the purpose of determining water levels in the reservoir.

Permittee shall record the staff gage readings monthly, within the first five days of each month, during the diversion season and also on November 1, unless ice prevents measurement. If ice prevents measurement, a note shall be added to the Progress Report by Permittee stating the months when measurement did not occur due to ice conditions. If staff gage readings are maintained by another entity, Permittee may submit those records in lieu of its own records. Such readings shall be supplied to the State Water Board with the next progress report submitted to the Board by permittee.

The State Water Board may require the release of water that cannot be verified as having been collected to storage prior to **June 30 of each year**.

Permittee shall allow MCWD and all successors in interest, or a designated representative, reasonable access to the reservoir for the purpose of verifying staff gage readings and determining water levels in the reservoir.

(0070047)
13. In accordance with the requirements of Fish and Game Code Section 5946, this permit is conditioned upon full compliance with Section 5937 of the Fish and Game Code.

(0140066)
14. Collection to storage is subject to bypassing water required to maintain fishery bypass flows under MCWD water right Permit 17332 (Application 25368), as listed below:
 - a. Mean monthly flow at Highway 395 to be maintained as follows insofar as natural flows and MCWD control permits:

March	5.0 cubic feet per second (cfs)
April	10.0 cfs
May	25.0 cfs
June	40.0 cfs
 - b. Minimum daily flow of 4.0 cfs, insofar as natural runoff and MCWD control permits.
 - c. The measurement location for the bypass flows, as well as the bypass flows themselves, shall be the same as the required measuring location and flows for Permit 17332. If the measurement location or bypass flow requirement is modified for Permit 17332, it is concurrently modified for this permit without further action by the State Water Board.

(0450400)
15. Collection to storage is not authorized whenever such collection would: (a) interfere with the bypass flow regime listed above, or (b) prevent or reduce diversions by MCWD under Permit 17332 (Application 25368), after taking into account the required bypass flows.

(0450800)

16. Permittee shall authorize MCWD to implement modifications to the Twin Lakes outlet in order to measure flow less than 10 cfs.
- (0450300)

THIS PERMIT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. The amount authorized for appropriation may be reduced in the license if investigation warrants.
- (0000006)
- B. Progress reports shall be submitted promptly by permittee when requested by the State Water Board until a license is issued.
- (0000010)
- C. Permittee shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by said State Water Board, reasonable access to project works to determine compliance with the terms of this permit.
- (0000011)
- D. Pursuant to California Water Code sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- E. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all

waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- F. This permit does not authorize any act that results in the taking of a threatened or endangered species or any act that is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, §§ 2050-2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531-1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

- G. Permittee shall maintain records of the amount of water diverted and used to enable State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605.

(0000015)

- H. No work shall commence and no water shall be diverted, stored or used under this permit until a copy of a stream or lake alteration agreement between the State Department of Fish and Game and the permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of the permittee. If a stream or lake agreement is not necessary for this permitted project, the permittee shall provide the Division of Water Rights a copy of a waiver signed by the State Department of Fish and Game.

(0000063)

This permit is issued and permittee takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

JAMES W. KASSEL FOR

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: APR 25 2012